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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,516	12/21/2001	Alexander Aulbach	076326-0219	2175

22428 7590 09/29/2004

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EXAMINER

ILAN, RUTH

ART UNIT PAPER NUMBER

3616

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/024,516

Applicant(s)

AULBACH, ALEXANDER

Examiner

Ruth Ilan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4 and 6-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings were received on May 21, 2004. These drawings are approved.

### ***Claim Rejections - 35 USC § 112***

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 depends from claim 15, and the scope of the claim is unclear because it is not known how the component can be both a seat and a door.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 6-11, and 15-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Coman et al. (US 5,556,129.) Coman et al. (Figure 9) teaches an elongated retaining device (229) for an air bag module (243) including a receiving region (237) adapted to be connected to at least a portion of an air bag module (first, they are connected via element 246, in that they are touching each other and both are connected to element 246, see Figure 10, second, they are “adapted” to be connected, in that “adapted” to perform a function is not a positive limitation but only requires the

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ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.) The retaining device includes an integrally connected hook (245) configured to be hooked into a receiving opening (249) of the motor vehicle component (244) and further includes a opening in an edge region (253) of the retaining device so that the air bag module does not protrude over the opening. The fastening device is a screw (255.) Regarding claim 7, the receiving region is an opening. The retaining device includes angled portions (corners shown in Figure 10.) Regarding claim 10, as broadly claimed, the receiving region including the opening (237) and the side walls around it can be termed the receiving region, and as such is angled, since the walls are at 90° to the opening. Regarding claim 15 and 16, the component is a side strut of a vehicle seat. Regarding claims 17, 18 and 22, and based on Applicant's remarks in the last paragraph of page 10 of the amendment of May 21, 2004, the vehicle door has not been given patentable weight, since the applicant has asserted that the vehicle door is not a feature of the claimed invention, and additionally since "adapted to engage" and "adapted to be fastened" are not positive limitations, but only require the ability to so perform. In re Hutchison, 69 USPQ 138. Regarding claim 19, the air bag module includes at least a covering cap. Regarding claim 24, the hook includes an open end opening toward the floor. The method claims are taught, since the fastener is inserted into the opening as a last step (see col. 5, line 60-col. 6, line 6.)

***Claim Rejections - 35 USC § 103***

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5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coman et al. (US 5,556,129.) Coman et al. teaches all elements of the claimed invention but does not disclose sheet metal or plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use either metal or plastic, since these materials are known as useful in vehicle componentry, and it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Regarding the limitations "formed as a metal die casting" or "formed by injection molding", these limitations have been given no patentable weight because they are directed to the method of forming the device, and as such are not germane to the issue of patentability of the apparatus.

7. Claims 1,2,4,6-13, 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karlow et al. (US 5,533,770) in view of Hosoda et al. (US 5,951,046.) or Coman et al. (US 5,556,129). Karlow teaches elongated retaining device (44) for an air bag module (24) including a receiving region (48, 44, 52) adapted to be connected to at least a portion of an air bag module (by 36 for instance.) The retaining device includes an opening in an edge region (58) of the retaining device so that the air bag module does not protrude over the opening. Regarding claim 7, the receiving region includes an opening (46.) The retaining device includes angled portions (corners between 48 and 44) Regarding claim 10, as broadly claimed, the receiving region can

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fairly be said to include 44, and 48 and as such is as such is angled, since these elements are at 90° to each other. Regarding claim 12, the retaining device is sheet metal (see col. 3, lines 40-43.) Regarding claim 13, the method of forming the device is not germane to the patentability of the apparatus, and additionally, the Examiner takes Official Notice that stamping or casting vehicle components is an ordinary engineering expedient and it would have been obvious to one having ordinary skill in the art to choose either of these methods as a matter of design choice. Regarding claim 15 and 16, the component (16) is a side strut of a vehicle seat. Regarding claims 17, 18 and 22, and based on Applicant's remarks in the last paragraph of page 10 of the amendment of May 21, 2004, the vehicle door has not been given patentable weight, since the applicant has asserted that the vehicle door is not a feature of the claimed invention, and additionally since "adapted to engage" and "adapted to be fastened" are not positive limitations, but only require the ability to so perform. In re Hutchison, 69 USPQ 138. Regarding claim 19, the air bag module includes at least a gas generator retaining element (34.) Karlow et al. fails to disclose a hook element that is used to secure the device prior to installation of the fastener. Both Coman et al. and Hosoda et al. teach such a hook element (Hosoda et al. element 7, and Coman et al. element 247.) Hosoda et al. teaches that such a hook is useful in securing a vehicle retaining bracket in an elongated opening prior to final installation of the fastener, so that installation is easier (see throughout) It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the retaining device of Karlow et al. to include a hook, as taught by Hosoda et al. or Coman et al., in order to provide for ease of installation.

Regarding claim 24, the hook includes an open end opening toward the floor. The method claims are taught, since the fastener is inserted into the opening as a last step. Regarding claim 4, the specific type of fastener is not disclosed, however, the Examiner takes Official Notice that it is well known in the fastener art to use screws or rivets. It would have been obvious to one having ordinary skill in the art at the time of the invention to use either screws or rivets with the retainer of Karlow et al. in view of Hosoda et al. or Coman et al., as a matter of design choice, since either of these fasteners are well known.

### ***Response to Arguments***

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

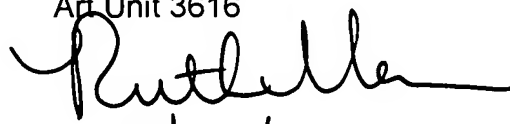
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth Ilan whose telephone number is 703-306-5956. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RI  
9/23/04

Ruth Ilan  
Primary Examiner  
Art Unit 3616



9/23/04